

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANIEL POWELL,

*Plaintiff,**-against-*CITY OF NEW YORK, IMAM HABIB
HASAN, and WARDEN V. VASQUEZ,*Defendants.*

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14 Civ. 9937 (PAC) (BCM)

OPINION & ORDER
ADOPTING REPORT AND
RECOMMENDATION

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HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Daniel Powell alleges that while incarcerated at Rikers Island in November 2014, he was prevented from attending two weekly Jumma services, but was able to attend in subsequent weeks. On July 14, 2016, Magistrate Judge Barbara Moses issued a Report and Recommendation (“R&R”) that correctly construes the complaint to allege violations of the First Amendment’s Free Exercise Clause; the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. § 2000cc-1; and the Fourteenth Amendment’s Equal Protection Clause.

Defendants move for summary judgment. The R&R recommends granting the motion because any depravation was *de minimis* and there is no evidence that the failure to call Powell for the two Friday services was anything other than a negligent oversight that was quickly remedied. Since no party objects to the R&R, the Court reviews its recommendations for clear error. *Feehan v. Feehan*, 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011). Finding none, the Court adopts the R&R in full. The Free Exercise and RLUIPA claims fail because two missed

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religious services does not constitute a substantial burden on the exercise of religion under either provision. *See Blalock v. Jacobsen*, 2014 U.S. Dist. LEXIS 148746, at *20-21 (S.D.N.Y. Oct. 20, 2014); *Singh v. Goord*, 520 F. Supp. 2d 487, 509 (S.D.N.Y. 2007). The Equal Protection claim fails because there is no evidence that prison rules or policies disadvantaged Muslim prisoners, or that Defendants intentionally discriminated against Powell on the basis of his religion. *See Giano v. Senkowski*, 54 F.3d 1050, 1057 (2d Cir. 1995). The motion for summary judgment is granted.

CONCLUSION

The Court ADOPTS the R&R and GRANTS Defendants' motion for summary judgment. Since an appeal from this order would not be in good faith, the Court DENIES *in forma pauperis* status for the purpose of an appeal. *See* 28 U.S.C. § 1915(a)(3). The Clerk is directed to enter judgment for Defendants and terminate 14 cv 9937.

Dated: New York, New York
August 3, 2016

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copy Mailed By Chambers To:
Daniel Powell
21 W. 59th St.
Unit #2
Philadelphia, PA 19139